

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JANICE E. NEWCOMB,)	
)	
Plaintiff,)	
)	Case No. 3-10-cv-1230
v.)	
)	
ALLERGY AND ENT ASSOCIATES OF)	
MIDDLE TENNESSEE P.C.,)	
)	
Defendant.)	
)	
)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant, Allergy and ENT Associates of Middle Tennessee, P.C. (“Allergy ENT”), hereby moves this Court for summary judgment dismissing Plaintiff’s claims with prejudice pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Allergy ENT asserts that it is entitled to summary judgment for the following reasons:

1. Plaintiff has no direct evidence of age discrimination and cannot establish a *prima facie* case of age discrimination that would establish that her termination was based on her age in violation of the Age Discrimination in Employment Act (ADEA) or the Tennessee Human Rights Act (THRA);
2. Plaintiff has no direct evidence of disability discrimination and cannot establish a *prima facie* case of disability discrimination that would establish that her termination was based on her alleged disability in violation of the Americans with Disabilities Act (“ADA”) or the Tennessee Handicap Act (“THA”);
3. Plaintiff cannot prove that she was entitled to or denied a reasonable accommodation for her alleged disability pursuant to the ADA, THRA or THA. Moreover,

Plaintiff cannot prove that Allergy ENT failed to make reasonable accommodations requested by her during the term of her employment;

4. Plaintiff cannot prove that she was subjected to a hostile work environment or harassed on the basis of her age or disability within the meaning of the ADEA, ADA, Title VII of the Civil Rights Act of 1964 as amended, the THRA or Tennessee common law;

5. Plaintiff cannot prove that she was retaliated against on the basis of complaints made or other protected activity she engaged in with respect to her age or disability within the meaning of the ADEA, ADA, Title VII of the Civil Rights Act of 1964 as amended, the THRA or Tennessee common law;

6. The undisputed facts conclusively establish that Allergy ENT terminated Plaintiff for a legitimate, non-discriminatory, non-retaliatory reason (poor performance), which defeats Plaintiff's claims in this action. Additionally, Plaintiff cannot establish that Allergy ENT's reason for her termination is pretextual; and

7. Plaintiff's claims for back pay, front pay, compensatory damages and punitive damages should be dismissed and/or substantially limited (with respect to damages other than punitive damages) because Plaintiff cannot demonstrate the evidence necessary to sustain these claims and cannot demonstrate that any actions by Defendant caused such damages.

WHEREFORE, Defendant Allergy and ENT Associates, P.C. respectfully requests that the Court grant its Motion for Summary Judgment.

In support of this motion, Allergy ENT relies on the following:

1. A Memorandum of Law filed contemporaneously herewith;
2. A Statement of Undisputed Material Facts filed contemporaneously herewith;

3. The Deposition of Plaintiff Janice Elaine Newcomb (including the continued deposition) and selected Exhibits thereto, attached hereto as **Exhibit A**;
4. The Deposition of Grady Lee Bryant, M.D. and Exhibit 2 thereto, attached hereto as **Exhibit B**;
5. The Deposition of Brenda Beckman and Exhibit 4 thereto, attached hereto as **Exhibit C**;
6. Excerpts from Plaintiff's Medical Records, attached hereto as **Exhibit D**;
7. The Deposition of Rebecca Tucker attached hereto as **Exhibit E**;
8. The Declaration of Allison Boehm, attached hereto as **Exhibit F**;
9. The Declaration of Angel Johnson, attached hereto as **Exhibit G**; and
10. The Deposition of Judith Snow, attached hereto as **Exhibit H**.

Respectfully submitted,

s/Luther Wright, Jr.

John G. Harrison (#027004)

Luther Wright, Jr. (#017626)

OGLETREE DEAKINS

SunTrust Plaza, Suite 1200

401 Commerce Street

Nashville, TN 37219

Phone: 615-254-1900

Fax: 615-254-1908

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served via electronic filing upon the following: Andy L. Allman, Andy L. Allman & Associates, 103 Bluegrass Commons Blvd., Hendersonville, TN 37075

on this the 30th day of July, 2012.

s/Luther Wright, Jr. _____

Luther Wright, Jr.

12841496.1 (OGLETREE)